

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

RELATES TO: KRS Chapter 350, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 C.F.R. Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 U.S.C. 1253, 1255, 1291

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation establishes definitions for terms used in 405 KAR Chapter 12.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface, or groundwater, fish, wildlife, vegetation, or other resources protected by KRS Chapter 350 could be adversely impacted by surface coal mining and reclamation operations.

(2) "Affected area" means any land or water area that is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes:

- (a) The disturbed area;
- (b) Any area upon which surface coal mining and reclamation operations are conducted;
- (c) Any adjacent lands the use of which is incidental to surface coal mining and reclamation operations;
- (d) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as established in this definition;
- (e) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas;
- (f) Any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations;
- (g) The area located above underground workings associated with underground mining activities;
- (h) Auger mining or in situ mining; and
- (i) Every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:
 - 1. Was designated as a public road pursuant to the laws of the jurisdiction where it is located;
 - 2. Is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and
 - 3. There is substantial (more than incidental) public use.
- (3) "Application" means the documents and other information filed with the cabinet seeking issuance of permits, revisions; amendments, renewals, and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.
- (4) "Cabinet" is defined by KRS 350.010.
- (5) "C.F.R." means Code of Federal Regulations.
- (6) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, sub-bituminous, or lignite by ASTM Standard D 388-77.
- (7) "Coal exploration" means the field gathering of:
 - (a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drill-

ing, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity could cause any disturbance of the land surface or could cause any appreciable effect upon land, air, water, or other environmental resources.

(8) "Day" means calendar day unless otherwise specified to be a working day.

(9) "Department" means the Department for Natural Resources.

(10) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(11) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350, in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(12) "KAR" means Kentucky administrative regulations.

(13) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(14) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet that establishes with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions that the authorized representative of the cabinet determines to have occurred based upon an inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, necessary and appropriate to correct the violations.

(15) "Operations" is defined by KRS 350.010.

(16) "Operator" is defined by KRS 350.010.

(17) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval that:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(18) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(19) "Permit" means written approval issued by the cabinet to conduct surface coal mining

and reclamation operations.

(20) "Permit area" means the area of land, indicated on the approved map submitted by the permittee with an application, required to be covered by the permittee's performance bond pursuant to 405 KAR Chapter 10 and that includes the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations pursuant to the permit, including all disturbed areas. Areas adequately bonded under another valid permit, pursuant to 405 KAR Chapter 10, could be excluded from the permit area.

(21) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(22) "Person" is defined by KRS 350.010.

(23) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" includes any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that could be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or could be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(24) "Reclamation" is defined by KRS 350.010.

(25) "Secretary" is defined by KRS 350.010.

(26) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include plant and animal life.

(a) An environmental harm is imminent, if a condition, practice, or violation exists that:

1. Is causing environmental harm; or

2. Could reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately repairable.

(27) "Surface coal mining and reclamation operations" is defined by KRS 350.010.

(28) "Surface coal mining operations" is defined by KRS 350.010.

(29) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(30) "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24. (18 Ky.R. 2472; eff. 4-3-1992; 20 Ky.R. 134; eff. 9-22-1993; TAm eff. 8-9-2007; 44 Ky.R. 628, 1309; eff. 1-5-2018; Crt eff. 7-3-2018.)